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ENFORCING STATUTE LIMITING RIGHT TO CHANGE CONTRACT WHERE THE LATTER IS ENTERED INTO BY NON-RESIDENT.

In Missouri there is a statute, which forbids forfeiture of an insurance policy where extended insurance from the surplus may keep it alive until assured's death. In N. Y. Life Ins. Co. v. Head, 34 Sup. Ct. 873, decided by U. S. Supreme Court, the facts show that a resident of New Mexico temporarily in Missouri. there took out a policy, and at his home borrowed from the company thereon afterwards.

It was conditioned in the loan contract that if any premium on the policy or any interest on the loan were not paid when due "settlement of said loan and of any other indebtedness under said policy shall be made by continuing said policy without further notice as paid up insurance of reduced amount in accordance with § 38 Chapter 690, of the laws of 1892 of the State of New York."

There was default and the policy was settled according to the law of New York, and the policy for reduced insurance was mailed to the assignee of the policy. The assured dying within the time the extended insurance would have covered, there was suit for the full amount under the Missouri law. In the state courts plaintiff had judgment. This judgment the Supreme Court reverses under the 14th amendment.

It appears to be conceded by the opinion, that had the assured been a resident of Missouri, the Missouri law would have controlled, but being a non-resident of that state dealing with a foreign corporation doing business under license from the state, the case stands differently.

The State Supreme Court as to the claim that the New York loan contract could not be treated as void without a violation of the 14th amendment, said:

"It is not an open question in this state that all subsidiary contracts made by parties to an insurance contract are within the contemplation and purview of the original contract and are not to be treated as independent agreements. This being so, they are inefficacious to alter, change or modify the rights and obligations as they existed under the original contract of insurance."

The U. S. Supreme Court appears to admit this principle, but points out that it applies only when the main contract is by a resident where the principle is invoked, and here it is necessary to inquire: "How far it was within the power of the state of Missouri to extend its authority into the State of New York, and there forbid the parties, one of whom was a citizen of New Mexico, and the other a citizen of New York, from making such loan agreement in New York simply because it modified a contract originally made in Missouri."

It was said the Missouri court's ruling was based upon a line of cases which "involved only policies of insurance issued in Missouri to citizens of Missouri."

It was also claimed as to the company being a foreign insurance company that the state could exclude it except upon such terms as it cared to impose, and when it accepted them it could not afterwards complain.

The U. S. Supreme Court said that this "gives no support to the contention that a state, by a license, may acquire the right to exert an authority beyond its borders which it cannot exercise consistently with the constitution."

In this case it is held, in effect, that the fact that one happens to be in a state where a contract is entered into, though such contract comes under the law of the place

where it is made, yet limitations by that law for its enforcement cannot be applied, where neither party is a resident of the state. And this rule is not changed by the fact, that under its license to do business within the state, one of the parties accepts the law of the state of the contract.

This is a strange sort of ruling, and seems as to the company to say that it is not bound by the conditions of its license, even if we admit that the casual visitor might not be. The latter, however, is not complaining, but is insisting that the interpretation and limitation of the law of the place of contract be applied.

There is much said in the opinion by the Chief Justice about the faith and credit clause protecting the law of New York, all of which seems to us beside the mark, as if as matter of law the Missouri statute, governing the main contract, also excludes the subsidiary agreement.

There is another way of looking at this matter. May a man step across a state line because he prefers contractual interpretation and then leave his contract in the air as to what interpretation shall be applied to it? May not the party-resident of New Mexico be supposed to have had his contract hedged about by Missouri statute, instead of having it wide open to emendation by New York law? If he so intended the Supreme Court defeats that purpose and only considers the residence of one of the parties.

We could see some ground for the assured claiming that he is not bound by Missouri law in this case, but how it may be said that the party who insured him under Missouri law is not estopped from denying this, it is impossible to conceive. It is nothing to the company that the assured was a non-resident of Missouri, if he was insured under Missouri law. What it did was legal to be done, and why should it not have all the force of a lawful act and continue as to all subsidiary arrangements to the end?

NOTES OF IMPORTANT DECISIONS

LIBEL AND SLANDER—PRIVILEGE IN MERCANTILE AGENCY REPORT, WHERE FALSE INFORMATION IS GIVEN.—In Pacific Packing Co. v. Bradstreet Co., 139 Pac. 1007, decided by Idaho Supreme Court, the facts show that a corporation with a capital stock of $50,000.00 was falsely reported to have been sued for $230,000 on account of "money advanced." It sued for business injury to its credit. It seems no malice was shown in the making of such report and the defendant pleaded privilege.

The Supreme Court, in reversing the sustaining of a demurrer to the petition, said:

"As for the contention that these reports on the financial standing of business concerns are privileged, we are unable to give to such a doctrine the sanction of the court. We agree that some courts have so held, but we do not believe it to be a sound or just rule, and it would certainly be demoralizing to business and open a ready and safe way for the unscrupulous, the blackmailer or grafter, to ruin the business standing and credit of an individual or corporation at pleasure and without recourse. The only safe and just rule either in law or morals is the one that exacts truthfulness in business as well as elsewhere and places a penalty upon falsehood, making it dangerous for a mercantile, commercial, or any other agency to sell and traffic falsehood and misrepresentation about the standing and credit of men or corporations. The company that goes into the business of selling news or reports about others should assume the responsibility for its acts, and must be sure that it is peddling the truth. There cannot be two standards of right nor two brands of truth, one for moralizing, and one for business. The law ought to look with a stern, cold eye upon the liar, whether he be incorporated or just an everyday man. If a mercantile agency can safely make false reports about the financial standing and credit of the citizen and destroy his business, it can then take the next step with equal impunity and destroy his reputation, leaving him shorn and helpless."

We considered this question in 69 Cent. L. J. 423, and ascertained that the contrary view to that of the instant case was largely found in federal circuit court decision, several state cases and English and Canadian decision being cited as in accord with the instant case.

In this utilitarian age and regarding the existence of mercantile agencies at the time one goes into trade as recognized *media* thereof,

it may plausibly be argued that the entrant tacitly agrees to the rules of the game as long as it is conducted fairly and in good faith. Of course, the privilege, if it exists at all, must be regarded as qualified and far from absolute.

In this view much that is said by the Idaho court may be taken with a large grain of allowance. While we do not greatly subscribe to the merely utilitarian theory in the violation of one's rights, we, nevertheless, know that business merely may have but relative rights, and that it submits itself to fair investigation by the trade or its agents when it embarks therein.

CONSTITUTIONAL LAW—CLAUSE IN RESPECT TO LOCAL AND SPECIAL LAWS.—The opinion by Missouri Supreme Court declaring the nonpartisan judiciary law for the City of St. Louis unconstitutional is not very illuminating. Indeed, it seems to amount to a mere *ipse dixit* by the court, that the subject could be readily provided for by general law and, therefore, it was unconstitutional to provide for it by local or special law, a test which may not be very conclusive, if we even grant that it be desirable to pass a general law. State v. Roach, 167 S. W. 1008, Bond, J., dissenting, and Lamm, C. J., and Graves, J., concurring in result.

The court says: "That special or local acts may be constitutionally valid when considered applicable to the City of St. Louis alone and though such acts relate to primary and general elections in that city is clear," but "it is difficult to see the necessity for the nonpartisan judiciary act. Nor is it difficult to see that a nonpartisan judiciary act may be as readily provided for by a general law for the whole state as for the city of St. Louis."

The court seems to us to accede to the proposition in its opinion that if there is any reason for classification as to a law otherwise local or special, its constitutionality is saved, but it fails to consider whether any classification founded on reason may be made for a nonpartisan judiciary law in a particular locality.

But in the next paragraph, the court seems to argue that not even would a general nonpartisan judiciary law be valid. Thus it is said: "Here an act concededly affecting alone the City of St. Louis, instead of legislating upon the single subject of nomination for all officers * * * * selects out of that subject a class of things, one particular thing, viz.: a candidate for circuit judge." It then illustrates by supposing an act as to the killing of wild ducks in a certain county between certain dates and says: "The nonpartisan judiciary act is in practically every respect similar in constitutional defects to the supposed case."

This shows not only scant consideration in regard to classification in the election of the judiciary, but also it shows that a state-wide law could not confine itself to one particular thing of a class of things. When upon this the court tells us it reaches its conclusion with the utmost regret because the judiciary should be lifted out of politics, it seems to us to suggest, unconsciously, a reason for classification, while it assumes all through its opinion that there is no reason for such a thing.

CONTRACTS—COMITY IN ENFORCEMENT WHERE CONTRARY TO POLICY OF FORUM.—The sale of intoxicating liquors appears to present the following dilemma: Independently of the Webb-Kenyon Act, which may be held unconstitutional, may one selling liquor in one state to be re-sold in a prohibition state, recover therefor in the latter state? This question was decided in the negative by North Carolina Supreme Court. Blumenthal & Bickart v. Kennedy, 81 S. E. 337.

This decision is made upon the principle that a note or contract valid in the state where it is made cannot be enforced in another state to whose public policy the transactions which form its consideration are contrary. But how does the matter stand when the transaction is for sale of an article in interstate commerce? If you forbid recovery therefor, do you not interfere with that commerce?

For instance, the Circuit Court of Appeals, First Circuit, held in a bankruptcy case, that a sale of liquor in Baltimore was not subject to the Vermont laws regulating the sale of liquors. In re Fenn, 177 Fed. 334, 100 C. C. A. 644. Claimant's account against the estate was therefore recognized.

But this may be different where the contract is made in the forbidding state by a shipper from the outside, a distinction reasonably conceivable. Arie v. Dixon, Iowa, 123 N. W. 173; Jones v. Yokum, S. D., 123 N. W. 372.

It is to be said there is much authority for the North Carolina case, supra, and it seems to us that the enforcement of such policy has a very direct bearing on the validity of contracts in interstate commerce and federal policy should control state policy, so far as mere comity is concerned.

RIGHT OF A BANK TO APPLY FUNDS BELONGING TO ANOTHER THAN THE DEPOSITOR, TO AN OVERDRAFT OR OTHER MATURED DEBT.

Preliminary—There exists a great conflict in decision as to whether, where funds apparently belonging to a depositor, come to a bank in ordinary course of business and without any knowledge on its part, that they really belong to another, can be appropriated by the bank to any antecedent indebtedness of the depositor. And notwithstanding that this question has prevailed in this country so long there is to be found reasoning in opinion holding, that it may be thus appropriated, so contrary to their conclusion, that I have thought a review of the cases on both sides of the question should prove of interest. The method pursued herein is to take two late opinions, one on the one side, and one on the other[1] and run down and analyze authority in their support.

Cases Favoring Bank's Lien on Deposits Though Impressed With a Trust—There may be eliminated at the start all question of the duty of a bank, where it has notice of the real ownership of another in money deposited with it, cases claiming the right of lien as strongly disavowing any right in the bank, as those which reject such claim. And it may be said as to the latter class of cases that they fully recognize the bank's right as to the least prejudice suffered by it arising out of the deposit having made, as for example, the subsequent honoring of checks on the deposit.

The Kenney case *supra* concerned the deposit of a check drawn to the order of "Wm. H. Deweese, Atty." and was for the proceeds of a mortgage belonging to payee's client. He deposited the check, indorsed according to its face, and it was credited to his individual account. He then had an overdraft in his bank of $32.18, and while the money was on deposit an overdue promissory note was charged against the deposit. Deweese dying, the bank paid the balance standing to his credit to his administrator. Suit was brought against the bank for the amount of the note and interest, and plaintiff had judgment in the lower court.

The Maryland Court of Appeals, in reversing the case, said: "Assuming that the check in the hands of Deweese was impressed with a trust in favor of the appellee it would seem clear upon the settled law of this state, which is in accord with the weight of authority in other jurisdictions, that there could be no recovery in this case, unless it is shown that the bank is chargeable with notice of the trust. Unless it had this knowledge, the bank acted entirely within its rights in charging up against the account of Deweese his indebtedness to it. . . . This right to apply the deposit to the customer's indebtedness is called the banker's lien or right of set-off, and does not depend upon the customer's assent."

In proof of the statement that this right is according to the settled law of Maryland several Maryland cases are cited and quotation made from opinions therein. Thus Judge Alvey said,[2] in referring to a prior case,[3] that that "was the ordinary case of a bank asserting its lien upon securities in its hands for the payment of balances due from its customers, according to the law of the land, the bank, a kind of factor in pecuniary transactions, was entitled to a lien upon all securities for money of customers in its hands for its advances to such customers in the ordinary course of business without reference to the true ownership of such securities, if the bank was without knowledge upon the subject."

The Miller case *supra* was where indorsements on notes were absolute and unquali-

(1) Frst Denton Natl. Bank v. Kenney, 116 Md. 24, 81 Atl. 227, 27 Ann. & E. Cas. 1337; Shotwell v. Sioux Falls Savings Bank (S. D.), 147 N. W. 288.

(2) Maitland v. Citizens' Nat. Bank, 40 Md. 540, 17 Am. Rep. 620.

(3) Miller v. Farmers, etc., Bank, 30 Md. 392.

fied, but the depositor to whom they were made thus indorsed sent them to the bank specially indorsed for collection, the bank concededly taking no title to the notes under this form of indorsement. The depositor permitted the notes upon their being paid to be passed to his credit, the bank being without knowledge that he did not own the notes. There was an account current running between the depositor and the bank for several years. Depositor failed owing the bank on antecedent debts considerably more than the proceeds of the notes. The owner of the notes sued the bank. The bank asserted its right to apply these proceeds to the indebtedness of the depositor. The court said: "It is contended, on the part of the defendant, that by the course of dealings between (the depositor) and the defendant, the latter has the right to retain the proceeds of the notes in its hands to be applied in part extinguishment of the general balance still remaining due on account of (the depositor). And whether the defendant has the right so to retain the money received on the notes depends upon a question of fact, and that it was credit really given to (the depositor), on the faith of these notes indorsed to the defendant before the receipt of knowledge that they belonged to the plaintiff. If such credit was in fact given, it can make no manner of difference whether it was in the form of the advances of money, or balances on account of mutual dealings between the parties, suffered to remain undrawn for. In case the credit was extended in either form, the right of defendant is clear, and the plaintiff must pay it." It should be said also that when the notes were paid they left a balance, after their credit, due to the bank. Afterwards the balance in the account shifted from one side to the other. There was prayer for instructions that unless after receipt of the notes defendant "gave some new credit, or made some new advances to (depositor) upon the faith of the notes," which was refused, and there being verdict for defendant, on appeal this was held to be error.

I must confess I am unable to see how the Kenney case is supported by the Miller case, and the case of Maitland *supra* merely determined, that where an accommodation note was given as collateral security for past indebtedness and was pledged for a larger amount than the maker authorized it to be pledged for, the plaintiff, in the absence of knowledge of the limited purpose could take it for whatever security it was really pledged for. The observation above quoted from this case was merely incidental in the reasoning by the judge.

So when we consider a Michigan case,[4] which holds that, when a draft is sent by one bank to a correspondent bank, indorsed for collection and credit, and the latter bank receives it without notice that it does not belong to the former, it may retain the proceeds of collection to satisfy a claim for a general balance against the former bank, its citation of cases and excerpts therefrom seem opposed to the conclusion it draws.

In this case, there was a draft by one corporation on another deposited by the former in its bank, which sent it to another bank and it, in turn, to another which collected it. The intermediate bank closed its doors. The last bank notified the second of a credit for the draft and it, in turn, notified the first. An order was made that all deposits made on February 8th should be returned to depositors and the collections being made that day the last bank claimed from the receiver of the second bank the proceeds of this draft, which it had credited to the account of the second bank. The lower court denied this claim and the Supreme Court reversed the holding, upon the ground that it was of a cash item apparently the property of the second bank.

This case seems to proceed, in part, on the doctrine of a banker's lien and quotes

(4) Garrison v. Union Trust Co., 139 Mich. 392, 102 N. W. 978, 70 L. R. A. 615, 111 Am. St. Rep. 407, 5 Ann. and E. Cas. 813.

from an Arkansas case[5] as follows: "A banker has a lien on all securities of his debtor in his hands for the general balance of his account. . . . And so if the securities be deposited after the credit was given, the banker has a lien for his general balance of account, unless there be an express contract, or circumstances that show an implied contract inconsistent with such lien." It then says it sees no such circumstances here, but this ought not to be very conclusive, as these words may be supposed to be referring to securities belonging to the debtor, to which it may well be conceived the lien attaches.

But the case goes on to speak of the apparent title of the debtor not being impugned and it says: "Although the proceeds of the draft were not to be credited to the Carson City bank until collected, it never was contemplated that the money, when collected, should be remitted to the Carson City bank. The instructions were explicit that, when collected, the proceeds should be credited to the transmitting bank." Put this does not touch the question whether, if it turns out, that the draft was not the property of the transmitting bank, the collecting bank may pursue a plan designed between collectors of drafts, when to make it account to true owners leaves it where it was before it collects the draft.

Then the case quotes from U. S. Supreme Court case,[6] opinion by Mr. Justice Brewer, but how that case illustrates the point at issue, I am unable to see. A Pennsylvania bank had an arrangement with an Ohio bank for it to collect paper sent and remit therefor on certain days of each month. When the Ohio bank failed the Pennsylvania bank sought to subject a collection made by a subagent of the Ohio bank to which the latter was indebted on general account, but the court ruled there was no trust fund to be followed because "by the terms of the arrangement between plaintiff and the (Ohio bank) the relation of debtor and creditor was created when the collections were fully made."

The court then argues that another Supreme Court case[7] sustains its view but we find, that it cites Morse on Banking as summarizing the opinion in that case, which he calls a leading case, as holding that: "The subagent, the collecting bank, may retain the money, if, without making an actual payment, it has given credit to the agent, or suffered balances to its own credit to remain undrawn with the agent upon the strength of these receipts. But unless it has made some payment, or suffered a balance to remain undrawn, or otherwise substantially relied on the agent's ownership, so that it would be unjustly prejudiced by the denial of that ownership, then it cannot retain the money. The true owner, by indorsing 'for collection,' could save all question; but if he chooses to permit his agent to appear as the owner, then if a subagent or any other person be misled and a loss occurs, it is proper that the owner whose carelessness has given opportunity for the subagent to be deceived should, as between the two, bear the loss."

This case, spoken of as a leading case, either says there must be prejudice in the true owner claiming the fund, or by reason of confusion of language should not be classed as a leading case at all. Was it really a support for the Garrison case? Nowhere in that case does it seem to be claimed that the collecting bank gave any further credit to the bank sending it the draft or that it suffered any balances in its hands to remain undrawn, in reliance upon this draft. It really had no time to do anything this way, because the very day it collected the draft the sending bank closed its doors.

The Garrison case also fails to notice a prior decision of the same court,[8] in which

(5) Cockrill v. Joyce, 62 Ark. 216, 35 S. W. 221.

(6) Commercial Nat. Bank v. Armstrong, 148 N. S. 50, 37 L. ed. 363.

(7) Bank of Metropolis v. New England Bank, 1 How. 234, 11 L. ed. 115; S. C. 6 How. 212, 12 L. ed. 409.

(8) Burtnett v. F. N. Bank of Commerce, 38 Mich. 630.

Graves, J., wrote the opinion, and it was concurred in by Campbell, Chief Justice and Cooley and Marston, Associate Justices. That case shows a collection by an agent and a deposit in bank to his credit and the checking out of a portion. The balance was appropriated to indebtedness by the depositor to the bank. After the death of the depositor a few months later, the collection and deposit were discovered by the administrator of the owner. The court said: "If decedent owned the proceeds of the bond when R. made the deposit, the mere fact, if it is a fact, that the bank officers were ignorant of such ownership or the mere fact of their formal transfer on the bank books of such proceeds to satisfy the debt due the bank from R. if there was such a debt, or both facts together could not extinguish B's. right or bar recovery as to the fund left in the bank if capable of being traced. . . . We are not aware of any principle which will enable a depositary who has received from a trustee or agent a fund belonging in fact to the principal or beneficiary to appropriate it by his sole act to his own debt held against the trustee or agent, and thereupon to insist that his want of knowledge of the true ownership is sufficient to guard such inequitable appropriation and bar the real owner from pursuing the fund." To the principle that the owner may follow and claim the fund a great number of cases are cited by the opinion.

An Iowa case[9] is much cited to the proposition, that a *cestui que trust* cannot follow money deposited in a bank to the individual credit of the depositor, where it has been appropriated to a matured note of the depositor and the note surrendered, the bank being ignorant of the fact that another claimed any interest in the money before it was thus appropriated. It was said: "Had the bank in this case simply relied upon its lien on the deposit, or had it treated it simply as security for the note of the investment company, which was a prior and antecedent debt, it may be that it should not be treated as a *bona fide* holder of the deposit. But the evidence shows that it canceled and surrendered the note with the final assent of the investment company and without notice of plaintiff's rights," and it cites authority that: "A want of bona fides cannot be attributed to the party who surrenders the evidence of an existing debt in consideration of money paid."[10] In other words, in the Smith case, the bank acting honestly had changed its position to its detriment. This case refers to the Burtnett case *supra* and distinguishes it.

In New York[11] it was held, even as to stolen money, that a bank receiving it in payment of notes, which it surrenders, is protected against the true owners. This case further shows credit extended because of a deposit. This case carries the idea of some prejudice, if deposit be withdrawn from the bank.

This case was referred to later in a case decided by Appellate Division of New York Supreme Court.[12] and it was held that the banker's lien attaches to securities and funds of the depositor and against unknown equities of all others in interest, citing for this a federal Supreme Court case.[13] But whatever was said on this subject in the cited case was *arguendo*, because the court held that the bank had full knowledge of the nature of the deposit that was sued for, and it is not necessarily opposed to the rule deduced from the Bank of Metropolis case *supra*.

In a Kansas case[14] it was held that payment by a depositary to an antecedent debt frees money from a trust, where it has been innocently received, though in general an antecedent debt does not constitute a valuable consideration. It was said that: "The

(9) Smith v. Des Moines Nat. Bank, 107 Iowa 620, 78 N. W. 238.

(10) Burnett v. Gustafson, 54 Iowa 86.

(11) Hatch v. Bank, 147 N. Y. 184, 41 N. E. 403.

(12) Meyers v. New York County Bank, 55 N. Y. Supp. 504, 36 App. Div. 482.

(13) Nat'l Bank v. Insurance Co., 104 U. S. 34.

(14) Kimmel v. Bean, 68 Kan. 598, 75 Pac. 1118, p. 4, L. R. A. 785, 104 Am. St. Rep. 415.

law wisely, from considerations of public policy and convenience, and to give security and certainty to business transactions, adjudges that the possession of money vests the title in the holder as to third persons dealing with him and receiving it in due course of business and in good faith upon a valid consideration. If the consideration is good as between the parties, it is good as to all the world." This doctrine seems affirmed in a comparatively recent Supreme Court case.[15]

A late Alabama case[16] has lately considered this question and said, in regard to a deposit against which an overdraft was set-off, that: "Had the defendant bank actually appropriated Ellis' deposit account to the payment and extinction of its valid claims against Ellis, before it received notice of plaintiff's right and claim thereto, it seems, according to the weight of authority, that the money, or rather the deposit account, would have been freed of the equity with which it was otherwise charged in favor of plaintiff." The court then cites the Smith and Kimmel cases *supra* and some opposing cases. There is nothing in the way of argument in this case, and we have seen how the Smith and Kimmel cases are supported by the cases they cite.

Cases Holding that Appropriation to an Antecedent Debt Does Not Excuse Depositary—The Shotwell case *supra* is quite a thorough discussion of the subject, a dissent being by two members of the court, and it goes upon the theory that just as it must be admitted that, if a depositary has the fund impressed with a trust at the time it is called for, as all the cases admit, so the depositary should account for all of said fund, as to which he has not changed his position to his hurt. As seen in several of the cases considered, there had been a change of position in reliance upon the deposit. It was said: "When Stegnor made the deposit he authorized the bank to apply such deposit upon his overdraft; but the bank had, as against appellant (owner) neither a legal nor an equitable right to this money, when it took it and, in ignorance of its true ownership, credited Stegnor's account therewith and honored checks against it, it put itself in a position, where, to the amount of such checks, it would be inequitable and unjust, in view of the necessities of business, to compel it to restore the fund to appellant, and he must suffer such loss. . . . yet it must be borne in mind that, to the extent of the amount, which appellant seeks to recover, respondent never changed its position for the worse, so far as any evidence shows. . . . Therefore no necessity of commerce required or justified the bank in refusing to pay over to appellant the amount of such draft, less checks paid after the deposit."

This case discusses the Garrison and Smith cases *supra* and holds that expressions therein make it approve this very rule.

A Nebraska case[17] was where a commission merchant deposited money realized from the sale of live stock belonging to a customer. At the time he was largely overdrawn, and it was held that, regardless of the question of notice to the bank, it could not apply the money to his indebtedness, but must account to the true owner. It was said that if money deposited is held in a fiduciary character, this is not changed by being placed to the credit of a depositor in a bank. To free this money it was said there must exist in favor of the bank an equitable defense arising out of subsequent transactions, as for example, the bank acting in reliance upon its presumed ownership differing from the real ownership.

In a case decided by Texas Civil Court of Appeals[18] it was ruled that a bank had no right to appropriate the true owner's money to an account the depositor already owed. It has been asserted that this case

(15) Hally v. Missionary Society, 180 U. S. 284, 45 L. ed. 531.

(16) Batson v. Alexander City Bank, etc., 60 So. 313.

(17) Cady v. Natl. Bank, 46 Neb. 756, 65 N. W. 906.

(18) Davis v. Bank, 29 S. W. 926.

was overruled in a later case[19] in the same court, but the latter case does not mention the prior case and the only thing it decides is that, though a depositor holds money in a fiduciary capacity and the bank has no notice thereof, the bank incurs no responsibility in honoring his checks thereon.

A Maine case[20] holds that where a bank received money one day and was notified the following day that it belonged to another party and demand was made on it to pay over to claimant the fund less checks drawn against it, it could not apply it to a balance due it from depositor. The court said: 'The defendant bank did not acquire any better title than did (the depositor), except that it was protected in the disposition of the money in the regular course of business made before it had notice of the circumstances and the consequent title of the plaintiff bank. After that it was bound to pay over to the plaintiff bank on its order what then remained undisposed of." This at least disposes of any claim to a banker's lien, for that would attach the moment the money was deposited and the bookkeeping entries could be made afterwards, and, if the court would say that a prior appropriation to the debt would suffice it loses sight of form for substance. By saying that the bank had no better title than the depositor, except according to the necessities of business, then it would seem clear it never could appropriate the deposit to an antecedent debt, unless it changed its position for the worse.

Summary—It seems to be true in fact that cases do not support the rule, that a bank can charge an indebtedness due to it to a trust fund, unless it shows that it has in some way relied on the deposit made. It is not the rule, that any one can claim advantage from a merely accidental circumstance, and a bank occupies no peculiar position with reference to deposits made with it. I think an intelligent consideration of the cases holding that a deposit by one holding trust funds, goes to feed a banker's lien on the depositor's apparent funds, when it would not be really prejudiced by their being excepted therefrom, will show they are not supported by authority.

N. C. COLLIER.

St. Louis, Mo.

(19) Bank v. Hill, Tex. Civ. App., 141 S. W. 200.

(20) Bank v. Eastern Trust & Bkg. Co., Me., 79 Atl. 4.

HUSBAND AND WIFE—MARRIED WOMAN'S ACT.

BROWN v. BROWN.

(Supreme Court of Errors of Connecticut. March 5, 1914.)

89 Atl. 889.

In view of the Married Woman's Act which had the effect of abolishing the common-law unity of husband and wife, a wife may now maintain an action for false imprisonment and assault against her husband; such an action not being against public policy.

THAYER, J. The plaintiff by this action seeks to recover damages from her husband for an assault and battery and false imprisonment. The parties were married in October, 1877. If she has a cause of action against her husband, it is not questioned that the suit is well brought. The complaint is demurred to; the only ground of demurrer assigned being, that, by reason of her coverture, she has no cause of action against him for the personal injuries alleged in the complaint. The superior court sustained the demurrer, and the only question presented by this appeal is whether that ruling was correct.

[1] By the common law the husband might restrain the wife of her liberty and might chastise her. 1 Blackstone, Com. 444. "The law which attached such subjection to the legal status of a married woman has been abolished, but not by direct legislation; it has disappeared under the continuous pressure of judicial interpretation or indirect legislation." Mathewson v. Mathewson, 79 Conn. 23, 27, 63 Atl. 285, 287 (5 L. R. A. [N. S.] 611, 6 Ann. Cas. 1027). It is now as unlawful for him to beat or falsely imprison his wife as for another to do so, and he is amenable to the criminal law for such an offense. If another, prior to the recent statutes, committed these of-

fenses against her, they were liable in an action for the injuries inflicted upon her by such torts, but the action had to be brought in the name of her husband and herself jointly; the real purpose of the action being to reduce the chose into the possession of the husband. The wife was joined, because, if her husband should die pending the suit, the damages would survive to her. 1 Blackstone, Com. 443; 1 Chitty on Pleading, 73. The common law regarded husband and wife as but one person, and the husband was that person. Being but one person, they could not contract with or sue one another. This resulted logically from the legal identity of husband and wife. If this were the present status of the parties, the plaintiff could have no action for the recovery of damages for the torts alleged.

[2] Public Acts 1877, c. 114, entitled an act in alteration of the act concerning domestic relations, but commonly called the Married Woman's Act, established a new legal status for persons thereafter married. It took effect April 20, 1877, and is embodied in the present revision of the general statutes. The purpose and effect of the act were in question in Mathewson v. Mathewson, supra. In the opinion, written by Judge Hammersley, after a review of the previously existing law relating to the status of married persons, it is held that "in enacting this law the state adopted a fundamental change of public policy;" that by it "the unity in the husband of his own and his wife's legal identity and capacity to own property was removed. and a new foundation, namely, equality of husband and wife in legal identity and capacity of owning property, was laid;" and that since the act took effect "husband and wife alike retain the capacity of owning, acquiring, and disposing of property, which belongs to unmarried persons." In that action a wife had sued her husband for breach of contract. The act provides that the wife shall have power to make contracts with third persons, and it was claimed that, as it in terms gave husband and wife no power to contract with each other, such power is prohibited; but it was held that, as the act "is in the nature of fundamental legislation, it involves all the results necessarily flowing from the principle established;" that the consequences resulting from the new status established by the act were not to be prohibited by inference, unless such inference is necessary; and that the right of husband and wife to sue each other for breach of contract is one of the consequences of the new status established by the act.

In Marri v. Stamford Street R. R. Co., 84 Conn. 9, 23, 24, 78 Atl. 582, 33 L. R. A. (N. S.) 1042, Ann. Cas. 1912B, 1120, we held that, as the result of the legal status created by the act of 1877, the wife may now, by an action in her own name, recover for physical injuries tortiously inflicted upon her as fully and to the same extent as a husband may when he is the person injured, and that the wife's right of recovery for her injuries is exclusive. In that case a husband had been allowed to recover, among other things, for the loss of his wife's services caused by her injuries, and so much of the judgment as allowed him damages for the loss from such injuries was set aside.

By these two cases it is established that a wife, married since April 20, 1877, may contract with her husband or other persons and may in her own name sue her husband or such other person for breach of such contract; also that she may have a cause of action upon which she may recover in a suit brought in her own name for personal injuries wrongfully inflicted upon her by others than her husband. If a cause of action in her favor arises from the wrongful infliction of such injuries upon her by another, why does not the wrongful infliction of such injuries by her husband now give her a cause of action against him? If she may sue him for a broken promise, why may she not sue him for a broken arm? The defendant's answer is that a wise public policy forbids it; that no right of action accrued to her from such a tort prior to the statute of 1877; that none is expressly given her by that statute, and that none can be implied; and that this is the holding of courts in other jurisdictions in cases which have arisen under similar statutes.

It is true that courts in some of the states have held that statutes more or less similar to the one here in question give a married woman no right of action against her husband for a tort. They find in the statutes construed no legislative intent to change the legal status of husband wife as regards the legal identity of the two, but simply an intent to ameliorate the condition of the wife by permitting her to retain and deal with her own property and to contract with and sue and be sued by others than her husband. These courts generally hold that, unless there is an express provision giving her the right to sue her husband, she has no action against him upon contract or for tort. It is unnecessary to review the individual cases. As we have said in Mathewson v. Mathewson, supra, where an act which leaves the foundation of the marriage status unchanged, and merely provides exceptions to the necessary consequences of that status, such exceptions may properly be limited by the necessary import of the language

describing them. If the legislative intent in such an enactment is not to change the foundation upon which the status of married persons was based at common law, namely, their legal identity, but its purposes is to empower the wife, while that status exists, to contract and sue in her own name like a feme sole, it might well be held that language bestowing this right could not be so extended as to permit her to contract with her husband or to sue him for a tort, because the statute intends that her identity shall still be merged in that of her husband. In the two cases above cited we have already held that the legislative intent in the act of 1877 was to change the foundation of the legal status of husband and wife, and that the statute effects that change. In marriages which have occurred since the act took effect, the parties retain their legal identity, and their civil rights are to be determined in accordance with the status thus established. These rights, except so far as they are modified by the statute itself or by other statutes, or are necessarily affected by the reciprocal rights and obligations which are inherent in the relation of husband and wife, are the same as they were before marriage. The statute leaves nothing to implication. The right to contract with the husband and to sue him for breach of contract and to sue for torts is not given the wife by the statute. There are rights which belonged to her before marriage; and, because of the new marriage status created by the statute, are not lost by the fact of marriage as they were under the common-law status. The status of the parties after marriage being fixed, there was no occasion for providing in express terms what the consequences would be. They followed logically.

In the Mathewson case we held that a wife's right to contract with the husband and to sue him for breach of such contract followed necessarily from the fact established by the statute, that her legal identity was not lost by her coverture. It is an equally necessary consequence of her retention of her legal identity after coverture that she has a right of action against her husband for a tort committed by him against her and resulting in her injury. Such a tort gives rise to a claim for damages. Such claim is property not in her possession but which she may by action reduce into her possession, just as she might before her coverture have had an action against him for such a tort committed before that event. The husband's delict, whether a breach of contract or personal injury, gives her a cause of action. Both necessarily follow from the fact that a married woman now retains her legal identity and all her property, both that which she possessed at the time of marriage and that acquired afterwards.

[3] In the fact that the wife has a cause of action against her husband for wrongful injuries to her person or property committed by him, we see nothing which is injurious to the public or against the public good or against good morals. This is the usual test for determining whether a statute or a contract is against public policy. When a wife is allowed to possess and deal in her own property and carry on business in her own name like a feme sole, she ought to have the same right to contract and enforce her contracts, and the same remedies for injuries to her person and property which others have, and to be liable upon her contracts and for her torts the same as others are. This is the position in which she now stands. The danger that the domestic tranquility may be disturbed if husband and wife have rights of action against each other for torts, and that the courts would be filled with actions brought by them against each other for assault, slander, and libel, as suggested in some of the cases cited in behalf of the defendant, we think is not serious. So long as there remains to the parties domestic tranquility, while a remnant is left of that affection and respect without which there cannot have been a true marriage, such actions will be impossible. When the purposes of the marriage relation have wholly failed by reason of the misconduct of one or both of the parties, there is no reason why the husband or wife should not have the same remedies for injuries inflicted by the other spouse which the courts would give them against other persons. Courts are established and maintained to enforce remedies for every wrong upon the theory that it is for the public interest that personal differences should thus be adjusted rather than that the parties should be left to settle them according to the law of nature. No greater public inconvenience and scandal can thus arise than would arise if they were left to answer one assault with another and one slander with another slander until the public peace is broken and the criminal law invoked against them. We find nothing to warrant the claim that public policy is opposed to the existence of a cause of action for a personal tort in favor of husband or wife against the other spouse, where the wife's identity is not merged in that of her husband. The plaintiff and defendant having married subsequent to April 20, 1877, the facts alleged in the complaint were not insufficient by reason of her coverture, and the demurrer should have been overruled.

There is error, the judgment is set aside, and the case remanded for further proceedings according to law. All concur.

NOTE.—*Right of Married Persons to Sue Each Other for Tort.*—The purpose of the married woman's acts in emancipation of woman and the destroying of the unity of the marriage association as it had previously existed has given rise to much discussion. The dissenting opinion in Thompson v. Thompson, 218 U. S. 611, 54 L. Ed. 1180, 30 L. R. A. (N. S.) 1153, concurred in by Justices Harlan, Holmes and Hughes, does not throw much light on this discussion, because they contended that the statute there involved expressly conferred the right on either spouse to sue the other for tort, and with the policy of the law in this regard the courts have no rightful concern.

The majority opinion, however, inveighed against "many attempts which have failed, to obtain by construction radical and far-reaching changes in the policy of the common law, not declared in the terms of the legislation under consideration."

Mr. Justice Day presumed that Congress was "familiar with the long-established policy of the common law, and were not unmindful of the radical changes in the policy of centuries which such legislation as is here suggested would bring about." Therefore, he thought that to effect such change Congress would have used "language so clear and plain as to be unmistakable evidence of the legislative intention."

In Strom v. Strom, 98 Minn. 427, 107 N. W. 1047, 6 L. R. A. (N. S.) 191, the statute provided that "women shall retain the same legal existence and legal personality after marriage as before marriage and shall receive the same protection of all her rights as a woman which her husband does as a man; and for any injury sustained to her reputation, person, property, character or any natural right, she shall have the same right to appeal in her own name alone, to the courts of law or equity, for redress and protection that her husband has to appear in his name alone."

It was said: "The purpose of the statute was to place the husband and wife on an equality as to actions by either for injuries to person, reputation or property," but it does not authorize actions by him against her, or by her against him "for a personal tort committed" during the marriage relation. This statute not directly saying they could sue each other for a tort, it was held no right of action lay in the wife, after divorce, to sue him for an assault committed during coverture.

In Bandfield v. Bandfield, 117 Mich. 80, 75 N. W. 287, 40 L. R. A. 757, 72 Am. St. Rep. 550, it was said no right was granted by the Michigan statute to a wife to sue her husband for a personal wrong committed during coverture and "no such right is conferred by our statute unless it be by implication," and "the legislature should speak in no uncertain terms when it seeks to abrogate the plain and long-established rules of the common law. Courts should not be left to construction to sustain such bold innovations. . . . The result of plaintiff's contention would be another step to destroy the sacred relation of man and wife and to open the door to lawsuits between them for every real and fancied wrong—suits which the common law has refused on the ground of public policy."

In Abbott v. Abbott, 67 Me. 304, 24 Am. Rep. 27, the action was against the husband and others for an assault, the action being brought after divorce. It was said: "There has been for many years a gradual evolution of the law going on for the amelioration of the married woman's condition, until it is now, undoubtedly, the law of England and of all the American States, that the husband has no right to strike his wife, to punish her, under any circumstances or provocation whatever," but "we do not perceive that there has been, either by legislative enactment or by the growth of the law in adapting itself to the present condition of society, any change in that relation which can afford the plaintiff (wife) any remedy."

The court then went on to say that: "Practically, the married woman has remedy enough. The criminal courts are open to her. She has the privilege of the writ of *habeas corpus* if unlawfully restrained. As a last resort, if need be, she can prosecute at her husband's expense a suit for divorce. . . . It would be a poor policy for the law to grant the remedy asked for in this case. If such a cause of action exists, others do. If the wife can sue the husband, he can sue her. If an assault was actionable, then would slander and libel and other torts be. Instead of settling, a divorce would very much unsettle, all matters between married parties. The private matters of the whole period of married existence might be exposed by suits. The statute of limitations could not cut off actions, because during coverture the statute would not run with divorces as common as they are now, there would be new harvests of litigation."

In Freethy v. Freethy, 42 Barb. 641, the statute provided that "any married woman may bring and maintain an action in her own name for damages against any person or body corporate for any injury to her person or character the same as if she were sole." The court said in regard to an action by the wife against the husband for slander, that while the words "any person" are very comprehensive, it must look to all the surrounding circumstances to ascertain the legislative intent. "When the legislature intends to make such a striking innovation of the rules of the common law, and so much opposed to public policy and the peace and happiness of the conjugal relation, as would be the case if husband and wife were permitted to sue each other for alleged wrongs to character, it should use such language as will make it clearly manifest and not leave it to the construction of the courts." This decision was soon afterwards approved in a case where the wife sued the husband for assault and battery. Longendyke v. Longendyke, 44 Barb. 367.

In Abbe v. Abbe, 48 N. Y. Supp. 25, 22 App. Div. 483, an act of the legislature since the two last cited cases was considered, the domestic relations act of 1896 gave to the wife "a right of action for any injury to her person," or against her husband "for an injury arising out of the marital relation." Under this act a wife sued her husband to recover damages for an assault and battery, and it was held that: "In no sense does an assault and battery arise out of the marital relation. . . . The ground which refuses relief rests upon the common law doctrine of the unity of parties."

In Nickerson v. Nickerson, 65 Tex. 281, the husband and wife were living apart and she sued him for false imprisonment. It was said generally that no compensation could be given to a wife through a civil action.

Following this case was Sykes v. Speer (Tex. Civ. App.), 112 S. W. 432, in which in a decree for divorce there was included damages inflicted by the husband on the wife. This portion of the judgment was struck out under ruling in the Nickerson case.

In Peters v. Peters, 156 Cal. 32, 103 Pac. 319, 23 L. R. A. (N. S.) 699, the action was by the husband against the wife for shooting him with a gun. The court said that: "Under the law of this state as it is, an action cannot be maintained by one spouse against the other for a battery committed during the continuance of the marriage relation," and there is nothing in the California showing any intention to permit actions for tort between husband and wife. "The provisions of the civil code relate solely to contract and property rights."

The instant case finds no direct support in any prior adjudication and so far as the court's query that "if she may sue him for a broken promise why may she not sue him for a broken arm?" lies in the fact, the answer is she can do neither unless the statute so provides. The Thompson case, e. g., provided specifically as to contracts, but the court held that it did not do this as to torts. The question, after all, is what does the statute unmistakably provide for, so far as the common-law unity is concerned, whether it relates to suit by wife against husband, or *vice versa*. We think the cases generally are against the instant case.

C.

ITEMS OF PROFESSIONAL INTEREST.

PROGRAM FOR MEETING OF MONTANA BAR ASSOCIATION.

For the first time in its history, the Montana Bar Association will this year hold its Annual Meeting outside of the city of Helena.

The Thirtieth Annual Meeting will be held at Billings, Montana, August 13, 14, and 15.

The officers of the Association and the bar of Billings are endeavoring to make this the greatest meeting of lawyers ever held in Montana. Members of the profession from North Dakota, Wyoming, Idaho, Washington and Oregon will attend.

A program has been prepared that I confidently hope will be interesting, instructive and profitable. Hon. William C. Bristol, of Portland, Oregon, who is one of the ablest lawyers, as well as one of the most eloquent speakers and finished orators of the Pacific Coast states, will deliver an address on the second day of the meeting. Besides this and the annual address of the President, formal addresses will be made or papers read by the following well known lawyers of Montana: Harry H. Parsons, of Missoula; E. B. Howell, of Butte; O. F. Goddard, of Billings; John T. Smith, of Livingston; J. Bruce Kremer, of Butte; Harry L. Wilson, of Billings; United States Senator T. J. Walsh, of Helena; former Justices of the Supreme Court, W. T. Pigot, R. Lee Word and Henry C. Smith; George M. Bourquin, United States District Judge; Theodore Brantly, of Deer Lodge, Chief Justice of Montana; W. L. Holloway, of Bozeman, Associate Justice of the Supreme Court; and Sydney Sanner, of Miles City, Associate Justice of the Supreme Court.

Interesting reports will be made by the standing committees. These and the papers that will be read will be for general discussion. The chairmen of the standing committees are: William Scallon, of Helena, committee on Jurisprudence and Law Reform; Charles R. Leonard, of Butte, committee on Judicial Administration and Remedial Procedure; Albert Newlon Whitlock, Dean of the Law School of the University of Montana, committee on Legal Education; and Ransom Cooper, of Great Falls, committee on Grievances.

A trout banquet will be served on Friday evening, August 14th, after which the Gridiron festivities (copied from the Eastern Montana Bar Association) will take place under the personal supervision of that prince of entertainers, Hon. John T. Smith.

All lawyers of the Northwest are cordially invited.

JESSE B. ROOTE,
President.

THE "ONE-JUDGE" SYSTEM.

"There is at the present time a movement in some of our states to abolish the so-called system of "one-judge" decisions. In Alabama, as the result of a memorial presented to the Supreme Court by a committee of the state bar association, each case will hereafter be considered and decided by the court before it is referred to a justice for the preparation of an opinion. In Louisiana, a committee of the state bar association is sponsoring a constitutional amendment increasing the membership of the Supreme Court from five to seven and prescribing a procedure which will result in each case being decided in conference before it is submitted to the judge who is to prepare the opinion of the court.

The methods of courts in parcelling out work to their different members vary, and no particular method can be formulated as the correct one to the exclusion of all others. A court should be free to divide up its work as

it deems best, so as to handle its business with as much dispatch as is consistent with sound decisions, and so that the aptitudes of individual members can be utilized to the fullest extent. A strong court, with an able head, who is skillful in directing the labors of his colleagues, does not need to be told how to arrange its work. Such details should not be regulated by statute, but left to the discretion of the court, or more particularly, that of its presiding officer, whose powers should be large.

"The objections to the 'one-judge system,' or at least to this system in its extreme form, are obvious, for decisions handed down by a full court which have not received the careful consideration of more than a single member do not inspire confidence. Such a practice carries the principle of division of labor too far and tends to weaken the court. But it is also possible to go too far in the opposite direction, by attempting to pool the work of the court so that every problem will receive the attention of the united mind of the tribunal. The latter method will entail waste of time and effort. Between the two extremes a safe middle passage must be steered; the benefits of conference must be obtained, but the court must also avail itself of the skill and specialized knowledge of individual members.

"It is to be feared that a stereotyped method of reaching decisions such as is advocated by the committee of the Louisiana Bar Association would hamper the Supreme Court unnecessarily in its effort to administer swift and certain justice. The court should certainly be enlarged, so as to be better able to take care of the volume of business with which it must deal, but should be left to its own discretion, and no legislation is necessary, beyond that to increase the number of the court, and, perhaps, to clothe the chief justice with more administrative authority and responsibility than he now has. The example of Alabama shows that it is possible to put an end to the 'one-judge' system without any legislative action."—Greenbag.

Note.—This journal reproduced in its columns the excellent memorial by the committee of the Alabama state bar, and endorsed and suggested that were its recommendations followed the course of decision in each state would be more consistent with itself. 78 Cent. L. J. 238.

We also gave an independent view of this question in 75 Cent. L. J. 87, contending in effect, that the "One-Judge Decision" often was but one judge reversing or affirming another judge, because reliance is greatly on his statement of the facts in the case. A judge may see facts as important which he embraces in a statement and may omit others as unimportant that to another judge's mind would be very important.

We remember to have heard it said of Hon. Judah P. Benjamin, that in his oral arguments before an appellate court he rarely referred to authority, but contented himself with a marshalling of facts and depended on the court to apply the law. Our plan is for the court in consultation to agree on a statement of facts and a formulation of the propositions of law applicable thereto and *then* assign to one of their number to write the opinion. As the Alabama memorial well states the number and lengths of opinions would be decreased, and it puts no judge in conference to defend his own opinion, but makes them all "reason together."

EDITOR.

HUMOR OF THE LAW.

Magistrate—And what was the prisoner doing?

Constable—'E were 'avin' a very 'eated argument with a cab driver, yer worship.

Magistrate—But that doesn't prove he was drunk.

Constable—Ah! But there worn't no cab driver there, yer worship.—London Opinion.

The jurors filed into the jury box, and after all the twelve seats were filled there still remained one juror standing ouside.

"If the court please," said the clerk, "they have made a mistake and sent us thirteen jurors instead of twelve. What do you want to do with this extra one?"

"What is your name," asked the judge of the extra man.

"Joseph A. Braines," he replied.

"Mr. Clerk," said the judge, "take this man back to the jury commissioners and tell them we don't need him as we already have here twelve men without Braines."

An esteemed correspondent from Milwaukee sends us the following verbatim copy of a paragraph of a will which was admitted to probate in that city some time ago. The names of the parties are omitted, of course, and it is unnecessary to say that the scrivener of the will is not a member of the bar, being one of the numerous amateurs who draw up wills for small fees and make good fees for lawyers as a result. The paragraph is as follows:

"I do hereby further direct the said ———, as such trustee, to pay to my granddaughter, ———, when she is twenty-one years or more old, the sum of one thousand dollars ($1000.00) as soon as possible after my death."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Bankruptcy** — False Representation. — A judgment on a liability for obtaining property by false representations is not released by a discharge in bankruptcy.—Chambers v. Kirk, Okla., 139 Pac. 986.

2.——Trust Funds.—Persons seeking to recover trust funds in the possession of the trustee's trustee in bankruptcy must prove title, and if the identification is doubtful that doubt must be resolved in favor of the trustee in bankruptcy.—Schulyer v. Littlefield, 34 Sup. Ct. Rep. 466.

3. **Bills and Notes**—Corporation.—A purchaser before maturity of a note of a corporation held entitled to recover thereon, although it was not signed by the officers required by the by-laws, where such requirement had never been observed and was unknown to the purchaser.—Washington & Canonsburg Ry. Co. v. Murray, U. S. C. C. A., 211 Fed. 440.

4.——Delivery.—The delivery of the payee of a note for a valuable consideration, with intent to pass title, transferred title even without indorsement.—Piper v. Hagen, S. D., 146 N. W. 692.

5.——Interest.—Payment, after maturity of a note for a sum less than the interest then due held no consideration for a promised extension of the time of payment.—Maker v. Taft, Okla., 139 Pac. 970.

6. **Carriers of Passengers**—Alighting.—A person who is carried beyond his destination may not alight from a moving train, though invited to do so by an employe of the carrier, where the danger of alighting is apparent.—Carter v. Seaboard Air Line Ry. Co., N. C., 81 S. E. 321.

7.——Care.—The duty of the Pullman Company to exercise reasonable care to protect passengers does not require it or its employes to prevent the arrest and removal of a passenger.—Thompkins v. Missouri, K. & T. Ry. Co., U. S. C. C. A., 211 Fed. 391.

8. **Chattel Mortgages**—Possession.—For the act of the holder of an unrecorded mortgage in subsequently obtaining possession of the mortgaged property and then recording his mortgage, to validate it so as to give it priority over an existing later unrecorded mortgage, it is essential that such possession shall have been obtained by joint action with the mortgagor.—Dixon v. Tyree, Kan., 139 Pac. 1026.

9. **Civil Rights**—Political Rights.—"Civil rights" are broader than political rights and, in the broader sense of the term, are those which are the outgrowth of civilization, and are given, defined, and circumscribed by positive laws necessary to organized government.—Byers v. Sun Savings Bank, Okla., 139 Pac. 948.

10. **Commerce**—License Tax.—A state may not, under the commerce clause of the federal Constitution, impose a license tax on a nonresident merchant traveling and soliciting orders by sample and catalogues for goods shipped into the state in car load lots to his order, and which he delivers to the person ordering them.—Stewart v. People of State of Michigan, 34 Sup. Ct. Rep. 476.

11. **Conspiracy**—Evidence.—In a prosecution for arson, evidence that an insurance adjuster for the owners of the destroyed goods attempted to bribe one of the state's attorneys to quash proceedings before the grand jury held admissible to show that such adjuster was in the conspriacy with the owners and equally guilty with them of causing the fire.—People v. Covitz, Ill., 104 N, E. 887.

12. **Constitutional Law**—Employment of Women.—Employment of women for more than ten hours in any one day or more than 56 hours a week in any manufacturing or mechanical establishment may be forbidden without infringing the liberty of contract assured by the fourteenth amendment of the federal Constitution.—Riley v. Commonwealth of Massachusetts, 34 Sup. Ct. Rep. 469.

13.——Judicial Discretion.—The Legislature cannot regulate the judicial discretion vested in the courts.—Ruff v. Georgia, S. & F. Ry. Co., Fla., 64 So. 782.

14.——Fourteenth Amendment.—Permitting the sale of intoxicating liquors by druggists for medicinal and other specified purposes while forbidding its sale by merchants does not deny the equal protection of the laws.—Eberle v People of State of Michigan, 34 Sup. Ct. Rep. 464.

15. **Contracts** — Employment. — A written agreement by which defendant "agrees to hire the employe, beginning November 26, 1912, from month to month at the monthly wage of $60," and which provides that the employe may terminate it by giving certain notice, and is signed by defendant and the employe, was not lacking in mutuality.—Bozzone v. Stafford, 146 N. Y. Supp. 1076.

16.——Illegality.—Where an agreement is lawful on its face or capable of being executed

in a lawful way, and one party to it intends that it shall be so executed, he may enforce it though the other party, unknown to him, intended an illegal act.—Sauer v. School Dist. of McKees Rocks Borough, Pa., 90 Atl. 150.

17.——Mutuality.—A contract signed by one party only, but acted upon by the other, may be as binding as though signed by both, where the obligations were mutual.—Hudson v. State, Ga., 81 S. E. 362.

18.——Public Policy.—An agreement in a deed of a right of way to a railroad company that the company in consideration of the conveyance will establish a flag station is not against public policy so long as it will not interfere with the duties the company owes to the public.—Parrott v. Atlantic & N. C. R. Co., N. C., 81 S. E. 348.

19. **Corporations**—Admissions. — Admissions of corporate liability, made prior to the completion of the incorporation, are not binding on the company.—Nahoum v. N. E. Marcoglou & Co., 146 N. Y. Supp. 1063.

20.——Fiduciary Relation.—In absence of special circumstances requiring information as to to company's affairs, he may purchase stock from a stockholder without doing so, if he does not actively mislead the stockholder.—Steinfeld v. Nielsen, Ariz., 139 Pac. 879.

21.——Foreign Corporations.—Statutes requiring a corporation to maintain an office within the state for the transaction of business are generally held not to relate to isolated transactions.—Loomis v. People's Const. Co., U. S. C. C. A., 211 Fed. 453.

22——Misrepresentations.—Where the owner sold corporate stock, and, as an inducement to the sale misrepresented the value of the corporate assets, such misrepresentations were as to matters of fact, and not as to matters of opinion.—S. R. McGowan Co. v. Calson, Wash., 139 Pac. 869.

23.——Ultra Vires.—A corporation cannot be bound for a subscription for stock in another corporation by the individual actions or promises of its directors or stockholders.—World's Panama Exposition Co. v. American Brewing Co., La., 64 So. 832.

24. **Covenants**—Sealed Instrument.—In a sealed instrument, the parties named as such in the premises are the only parties having a suable interest, no matter for whose benefit the deed is made, unless other parties are expressly given that right in the remainder of the deed; but such right cannot be implied.—Jones v. Buck, Del., 90 Atl. 86.

25. **Criminal Law**—Confession.—A conviction may be sustained on a voluntary confession, corroborated merely by proof of the corpus delicti. —Snow v. State, Ga., 81 S. E. 363.

26. **Damages**—Measure of.—Where a business is wrongfully interrupted and a loss is sustained, evidence of the falling off in business, with loss of income, shows the injury to the usable value of the property damaged, and is proper in estimating the damages recoverable. —Barnes v. Midland R. Terminal Co., 146 N. Y. Supp. 1033.

27.——Interest.—While interest is not ordinarily allowed on unliquidated damages, it may be allowed as compensation for the damage or delay occasioned by defendant's fault in actions for injuries to property.—Bagnall v. City of Milwaukee, Wis., 146 N. W. 791.

28.——Nominal.—A judgment for nominal damages will be denied in a suit for damages for breach of a contract to exchange lands where no rights of the plaintiff, who suffered no actual damage, would be protected by the judgment.—Strait v. Wilkins. Cal., 139 Pac. 911.

29. **Death**—Damages.—In an action for wrongful death, plaintiff, in order to recover substantial damages, must not only show that decedent during his life rendered assistance to his next of kin, for whose benefit the suit was brought, but must show a reasonable probability that such assistance would have continued but for his death.—Standard Forgings Co. v. Holmstrom, Ind., 104 N. E. 872.

30. **Divorce**—Cruel Treatment.—Cruelty of a wife, causing great mental distress, constituting ground for divorce, is established by a showing of her transferring her affections to another, stating this to others, and refusing to discontinue her manifestations of friendship for him and her visits and associations with him.—Holm v. Holm, Utah, 139 Pac 937.

31. **Easements**—Termination.—An easement across a tract of land to continue as long as the grantor owned the land is not terminated by a conveyance by the grantor to his wife of the bare legal title to be held in trust for himself for the purpose of terminating the easement.—Arbaugh v. Alexander, Iowa, 146 N. W. 747.

32. **Equity**—Bill of Review.—A bill of review will lie to vacate a decree on the ground of errors of law on the face of the decree, in that the court was without power to make it.—Holloway v. Safe Deposit & Trust Co. of Baltimore, Md., 90 Atl. 95.

33.——Petition for Review.—The procedure for a rehearing after an interlocutory decree in an infringement suit, on the ground of newly discovered evidence, under the new equity rules may properly be by petition.—Sheeler v. Alexander, U. S. D. C., 211 Fed. 544.

34. **Estoppel**—Quit Claim Deed.—A quitclaim deed does not operate upon rights of subsequently acquired.—French v. Bartel & Miller, Iowa, 146 N. W. 754.

35.——Witness.—That defendant in ejectment testified in a former proceeding that he had no interest in land cannot estop him from asserting an after-acquired legal interest in an action at law.—Crim v. Crim, Ore., 139 Pac. 917.

36. **Evidence**—Carbon Copy.—A carbon copy is a duplicate original, and is admissible in evidence.—Fremont Canning Co. v. Pere Marquette R. Co., Mich., 146 N. W. 678.

37——Delivery.—Parol evidence is admissible to show that an instrument sued on was never delivered, or was to take effect only on the happening of some future event.—Bartholomew v. Fell, Kan., 139 Pac. 1016.

38.——Parol Testimony.—Parol evidence tending to vary the terms of an unambiguous contract by showing that defendant signed merely as representative of a corporation, and not as an individual, held properly excluded.—Crelier v. Mackey, Pa., 90 Atl. 158.

39. **Execution**—Public Property.—Property in use for public or governmental purposes cannot be sold on execution or other legal process, the rule being founded on public policy.—School

Town of Windfall City v. Somerville, Ind., 104 N. E. 859.

40. **Fraudulent Conveyances** — Subsequent Creditors.—A conveyance by a husband to his wife cannot be attacked by subsequent creditors as fraudulent, unless it caused insolvency upon the part of the husband as to his existing creditors, or was made with the intent of defrauding subsequent creditors.—Weinstock v. Hallenbeck, 146 N. Y. Supp. 1047.

41. **Frauds, Statute of**—Debt of Another.—An agreement by the defendant to pay plaintiff the par value of stock taken by the plaintiff in exchange for land conveyed to the corporation if the corporation failed to pay dividends, was not a promise to answer for the debt or default of another.—Clement v. Rowe, S. D., 146 N. W. 700.

42.——Oral Contract.—An oral contract for the purchase or sale of realty being void under the statute of frauds, damages for breach thereof cannot be recovered.—Farmers' State Bank v. Cox, Okla., 139 Pac. 953.

43.——Services.—One rendering services under a contract void under the statute of frauds may recover the reasonable value of the services.—Seifert v. Mueller, Wis., 146 N. W. 787.

44. **Garnishment**—Bulk Sales Law.—Any liability of a purchaser of a stock of goods to a creditor of the seller, on the theory of an assumption of guaranty of payment by the purchaser of the indebtedness of the seller, cannot be enforced in a garnishment against the buyer, the theory of which is a statutory liability for noncompliance with the sales in bulk law.—Continental Distributing Co. v. Swanson, Wash., 139 Pac. 865.

45. **Homicide**—Dying Declaration.—Declaration of deceased that he knew he was going to die from the wound, and his condition, depressed and suffering from shock from the wound, justified admission of his statement as to what occurred at the time of the shooting.—State v. Shouse, N. C., 81 S. E. 333.

46. **Homestead**—Abandonment. — A woman who merely resided on land, which she formerly held as a homestead, but had abandoned, does not acquire a homestead where she left the management and control to her two sons.—Somers v. Somers, S. D., 146 N. W. 716.

47.——Residence.—It is essential to a homestead exemption that there be a resident family and a family residence wherein a claimant resides; residence within the state upon a tract being required of both the head of the family and the family.—Tromsdahl v. Noss, N. D., 146 N. W. 719.

48. **Husband and Wife**—Voluntary Conveyance.—A consideration of love and affection and the payment of a nominal sum is sufficient to sustain a conveyance from a husband to his wife.—Arbaugh v. Alexander, Iowa, 146 N. W. 747.

49. **Insurance**—Benefit Society.—Where rules provided that nonpayment of assessment would cause a forefeiture of membership, the beneficiaries of the death certificate of a member who had defaulted could not recover thereon, though the assessments would have been paid by a beneficiary but for the belief that the insured died long prior to the time of his actual death.—Mooney v. Supreme Council of Royal Arcanum, Pa., 90 Atl. 132.

50.——Benefit Society.—Where a benefit certificate provided that there could be no recovery, unless the accident causing death should leave a visible mark on the body, the insurer is liable where the injury caused visible marks on the body, even thaugh they were later obliterated, and did not appear after death.—Mutual Trust & Deposit Co. v. Travelers' Protective Ass'n of America, Ind., 104 N. E. 880.

51. **Intoxicating Liquors**—Comity.—A contract made outside of the state for the sale of whisky to be resold by the purchaser within the state, contrary to the law, is contrary to the public policy of the state, and will not be enforced, even though it was valid in the state where it was made.—Bluthenthal & Bickart v. Kennedy, N. C., 81 S. E. 337.

52. **Judgment** — Notwithstanding Verdict. — The right to move for judgment non obstante veredicto on the whole record is given by act of April 22, 1905 P. L. 286), only to a party who has presented a written request for binding instructions.—Hanick v. Leader, Pa., 90 Atl. 146.

53.——Res Judicata.—The rule of res judicata extends to exery question legally cognizable in the former proceeding.—Nernst Lamp Co. v. Hill, Pa., 90 Atl. 137.

54.——Warrant of Attorney.—To hold invalid, as contrary to public policy of Indiana, a warrant of attorney to confess judgment contained in a promissory note payable in Indiana does not violate the full faith and credit clause of the federal Constitution.—Irose v. Ballo, Ind., 104 N. E. 851.

55. **Libel and Slander**—Mercantile Agency.—The report of a mercantile agency to its patrons on the financial standing of a business concern is not a privileged communication.—Pacific Packing Co. v. Bradstreet Co., Idaho, 139 Pac. 1007.

56. **Limitation of Actions**—Contingent Fee.—Where an attorney contracted to render services for a contingent fee and was displaced before recovery, limitations did not begin to run against his right of action until a recovery had been had by the client, so that the amount of the attorney's compensation could be ascertained.—Martin v. Camp, 146 N. Y. Supp. 1041.

57.——Deed of Trust.—The rule that limitations do not run against an express trust does not apply to an action to foreclose a deed of trust or for the appointment of a substituted trustee thereunder.—Rowe v. Mulvane, Colo., 139 Pac. 1041.

58. **Mandamus** — Pleading. — On mandamus against a circuit judge to compel him to quash a writ of capias on the ground that the affidavits therefor were insufficient, the Supreme Court will not consider the allegations of the declaration filed in the action, since the affidavits for the writ cannot be aided by a subsequent pleading.—Hirdes v. Ottawa Circuit Judge, Mich., 146 N. W. 646.

59. **Master and Servant**—Assumption of Risk. —Ordinarily, an employe engaged in making or completing an entry in a coal mine assumes the dangers which develop as the work progresses. —Williams v. Craig Dawson Coal Co., Iowa, 146 N. W. 735.

60.——Discharge.—The acts of a servant may be so flagrant and contrary to the implied conditions arising from the relation of master and servant that the court can say, as a matter of law, that they justified the servant's discharge.—Dorrance v. Hoopes, Md., 90 Atl. 92.

61.——Quantum Meruit.—An employe cannot recover on quantum meruit for services rendered, where he breached his written contract of employment to serve for an entire month by quitting before the end of the month without just cause or without his employer's consent.—Bozzone v. Stafford, 146 N. Y. Supp. 1076.

62.——Res Ipsa Loquitur.—The sudden starting of a machine when it should be at rest, resulting in injury to one reasonably supposing

that it will remain at rest, if unexplained, is evidence of negligence by the employer in supplying a defective machine.—Cullalucca v. Plymouth Rubber Co., Mass., 104 N. E. 956.

63.——Respondeat Superior.—Where an employe of the defendant company, after business hours, rode in one of the company's motor trucks without permission, solely for his own pleasure, he was not acting within the scope of his employment.—Bursch v. Greenough Bros. Co., Wash., 139 Pac. 870.

64.——Safe Place.—A master's negligence in failing to furnish a safe place to work may be established by circumstantial evidence.—Broseghini v. Sherman Coal Co., Kan., 139 Pac. 1025.

65.——Surgical Aid.—A railroad company is not liable to an injured employe for the negligence of a surgeon called by it to render surgical aid, if it was not negligent in selecting and employing an unskilled and incompetent surgeon.—Tippecanoe Loan & Trust Co. v. Cleveland, C., C. & St. L. Ry. Co., Ind., 104 N. E. 866.

66.——Vice-Principal.—A conductor having entire control of a railway train is the personal representative of the company, and it is liable for injuries to a brakeman from the conductor's negligence.—Ainsley v. Pittsburgh, C., C, & St. L. Ry. Co., Pa., 90 Atl. 129.

67.——Warning.—The danger that splinters may fly from a rock when it is struck by a pick, whether the pick be sharp or dull, is a matter of common knowledge, and the master owes no duty to warn his servant of such danger.—Toth v. Osceola Consol. Mining Co., Mich., 146 N. W. 668.

68.——Workmen's Compensation.—Under Workmen's Compensation Act 1911, the judge before awarding a lump sum must determine what sum should be paid periodically, and state the method by which he reached the result, and what induced him to commute the periodical payments into a lump sum.—Mockett v. Ashton, N. J., 90 Atl. 127.

69.——Workmen's Compensation—Where an employe, while running from his place of work to punch a time clock on the noon whistle blowing, collided with a coemploye and sustained injury resulting in his death, the accident arose out of and the course of his employment within the Workmen's Compensation Act.—Rayner v. Sligh Furniture Co., Mich., 146 N. W. 665.

—70. **Municipal Corporations.** Ordinance.—Under a city charter allowing the aldermen to pass any ordinance which they deem proper for the general welfare of the city, they cannot make it unlawful for negroes to occupy as residences houses upon streets on which the majority of houses are occupied by white persons.—State v. Darnell, N. C., 81 S. E. 338.

71. **Principal and Agent**—Scope of Agency.—The apparent scope of an agent's authority is that which the principal has held him out as having, or has permitted the agent to represent that he possess, but, to avail himself of such apparent authority, a third person must have dealt with the agent in good faith, relying thereon in the exercise of reasonable prudence.—Brager v. Levy, Md., 90 Atl. 102.

72. **Rape**—Damages.—Rape gives the female a cause of action for damages against the perpetrator.—Priboth v. Haveron, Okla., ——Pac. 973.

73.——Damages.—That a complaint in action for damages for rape on one under the age of consent states that the act was done forcibly and violently does not prevent recovery in the absence of proof of force and violence.—Hough v. Iderhoff, Ore., 139 Pac. 931.

74.——Intoxication.—If defendant gave a woman whisky, and caused her to be so intoxicated that she could not resist him, and then had sexual intercourse with her, he would be guilty of rape.—Hirdes v. Ottawa Circuit Judge, Mich., 146 N. W. 646.

75. **Release**—Construction.—A release is to be construed from the standpoint of the parties at the time of its execution, and evidence is admissible to show surrounding circumstances for that purpose.—Swinburne v. Swinburne, R. I., 90 Atl. 121.

76.—Sales—Binding Contract.—To constitute a binding contract by plaintiff to purchase stock for resale to defendant, it was not necessary that plaintiff have title to the stock when the contract was made.—Dudley A. Tyng & Co. v. Converse, Mich., 146 N. W. 629.

77.——Consideration.—If a contract of sale was valid, an agreement by the buyer's agent to pay a higher price than that agreed upon was without consideration.—Kuhmarker Mfg. Co. v. Hills, 146 N. Y. Supp. 1013.

78.——Inadequacy of Price.—A sale will only be set aside in equity for inadequacy of price, where such inadequacy is so gross as to shock the conscience and be decisive evidence of fraud.—Steinfeld v. Nielsen, Ariz., 139 Pac. 879.

79.——Rejection.—Purchasers of paint waived their right to reject it, and estopped themselves to deny that they had not accepted it, where, though they told the seller they rejected it, they, having had plenty of opportunity to test it, continued to use and sell it.—Rice v. Friend Bros. Co., Iowa, 146 N. W. 748.

80. **Tenancy in Common**—Possession.—Where the only acts of ownership by defendant in partition over uninclosed wild land were occasionally to get firewood, fence posts, and sand therefrom, payment of taxes, and excluding trespassers, and occasionally going over the land, he did not have such adverse possession as could ripen into title by prescription.|—Price v. McLeod, Fla., 64 So. 769.

81. **Trial**—Burden of Proof.—Since, where the answer in an action on an accepted order admitted the execution and acceptance of the order, but stated that plaintiff had wrongfully obtained possession of it, the burden was on defendant to prove that the possession was wrongfully acquired, defendant had the right to open and close.—Bartholomew v. Fell., Kan., 139 Pac. 1016.

82. **Trusts**—Following Trust Funds.—Trust funds deposited by a trustee in his individual bank account are dissipated if the fund is at time wholly depleted, and cannot be treated as reappearing in sumh subsequently deposited to the same account.—Schuyler v. Littlefield, 34 Sup. Ct. Rep. 466.

83. **Vendor and Purchaser**—Names.—A discrepancy between full names and initials in conveyances, having stood for more than ten years, is immaterial.—Cunningham v. Friendly, Ore., 139 Pac. 928.

84.——Notice.—Grantees of the legal title who had no notice that the grantor held as trustee for plaintiff, took fee-simple title, and the plaintiff is not entitled to any relief against them.—Elwert v. Reid, Ore., 139 Pac. 918.

85. **Waters and Water Courses**—Riparian Owner.—Any swelling of the water of a natural water course on the lands of an upper riparian owner, caused by the lower owner, is an invasion of the upper owner's rights, he having a right to have the stream maintained in its natural condition, but for his present and possible future needs.—Guynn v. Wabash Water & Light Co., Ind., 104 N. E. 849.

86. **Wills**—Probate.—A court of ordinary in probating wills merely adjudicates whether the paper propounder is the last and legal will of deceased, and not whether any particular devise is valid.—Trustees of University of Georgia v. Denmark, Ga., 81 S. E. 238.

87.——Undue Influence.—Where a testator is unduly influenced by the beneficiary in other important matters, it may be presumed that the same undue influence was exercised in regard to the will.—Fairbank v. Fairbank, Kan., 139 Pac. 1011.

88.——Undue Influence.—That a testator gave practically his entire estate to his wife did not place upon her the burden of disapproving undue influence.—In re Cooper's Will, N. C., 81 S. E. 161.

89. **Witnesses**—Contempt.—Where a witness' conduct shows beyond doubt that he is refusing to tell what he knows, or that his testimony is mere transparent sham, he is guilty of contempt.—United States v. Appel, U. S. D. C., 211 Fed. 495.

90.——Incrimination.—Where a witness declined to testify on the ground that his testimony might incriminate him, the issuance of an unconditional pardon qualified him to testify whether he accepted the pardon or not.—United States v. Burdick, U. S. D. C., 211 Fed. 492.